

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADRIAN GUTIERREZ and
GERARDO GUTIERREZ,

Defendants.

CR 21-18-BU-DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's findings and recommendations as to the guilty pleas of both Adrian Gutierrez and Gerardo Gutierrez. (Docs. 68; 70.) Because no party objected, the Court will not review the matter *de novo*. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Instead, the Court reviews the findings and recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Both Adrian Gutierrez and Gerardo Gutierrez are charged by superseding information with possession with the intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. (Doc. 47.) Judge DeSoto

recommends that this Court accept their respective guilty pleas to this charge after they appeared before her pursuant to Federal Rule of Criminal Procedure 11.

(Docs. 68; 70.) The Court finds no clear error in Judge DeSoto's findings and recommendations and adopts them in full, including the recommendation to defer acceptance of the any plea agreements until sentencing when the Court will have reviewed them, and any presentence investigation reports. In light of the United States motion preliminary order of forfeiture (Doc. 72), the Court will address the issue of forfeiture by separate order.

Accordingly, IT IS ORDERED that Judge DeSoto's findings and recommendations (Docs. 68; 70) are ADOPTED in full.

IT IS FURTHER ORDERED that Adrian Gutierrez's and Gerardo Gutierrez's motions to change plea (Docs. 41–42) are GRANTED.

IT IS FURTHER ORDERED that Adrian Gutierrez and Gerardo Gutierrez are adjudged guilty as charged in the superseding information.

DATED this 3rd day of December, 2021.



Dana L. Christensen, District Judge
United States District Court